

A. Powers of the State Board of Education

1. Statutory Authority

The State Board of Education is the principal statutory authority responsible for deciding whether to approve or disapprove each petition to form a new school district. (EC 35753 and 35754) A petition moves forward for local vote only if approved by the State Board. (EC 35755 and 35756) The State Board must hold two public hearings on each petition. One hearing pertains to the unification's impact or lack thereof on the environment; this hearing is held under the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., and typically there is no objection expressed to State Board adoption of a negative declaration of environmental impact. The other hearing pertains to the unification's substance and conformity with the minimum criteria for approval. (EC 33753 and 35754)

The State Board also has authority to hear and decide appeals from decisions of county committees on school district organization concerning transfers of territory between school districts. (EC 35710.5 and 35711)

The State Board is required by statute to establish minimum standards to be used in approving or disapproving petitions for the formation or reorganization of school districts. (EC 35750)

The State Board has both general and specific authority to establish regulations governing school district organization. (EC 33031, 35712, 35753[a][10], and 35768) The adopted regulations specific to school district organization and procedures for public hearings are contained in the California Code of Regulations, Title 5, sections 18570–18573. (5 CCR 18570–18573)

Finally, based upon properly completed local requests, the State Board has authority to waive many provisions of the Education Code and accompanying regulations. (EC 33050 et seq.) Waiver requests are occasionally submitted to address specific problems associated with school district organization.

2. Criteria for Approval of Reorganization Petitions

- a. *Authority to Approve If Criteria Are Substantially Met.* The State Board of Education may, but is not required to, approve proposals for reorganization of school districts if the criteria set forth in EC 35753(a) are substantially met.

Several additional minimum criteria are found in 5 CCR 18573. This section is now largely repetitive of statute because of 1990 legislation (Senate Bill 1927, Chapter 1658, Statutes of 1990), which codified much of the preexisting regulation.

A side-by-side comparison of statute and regulation can be found at the end of Chapter 6.

- b. *Authority to Approve If an Exceptional Situation Exists.* The State Board may depart from the minimum criteria for approval under certain conditions.

Specifically, the State Board may determine that it is not practical or possible to apply the criteria literally and that circumstances provide an exceptional situation sufficient to justify approval of the proposal. (EC 35753[b])

In 76 unification proposals submitted between 1975 and 1997, the State Board waived the district size criterion 22 times. Under California Code of Regulations, Title 5, Section 18573, the minimum size for a unified district is 1,501 students. In sparsely populated areas, however, it is often difficult or impossible to reach that number. The State Board has considered factors such as distance, weather conditions, geography, and topography in deciding whether to waive the size criterion. Only once has the State Board determined that an exceptional circumstance existed for any other criterion; the specific situation involved the limitation on increased costs to the state.

- c. *Authority to Amend or Modify Proposals.* The State Board has authority to amend a proposal, but the authority is limited to certain items (EC 35730–35738) that relate generally to governing board membership, area of election, and division of assets. Otherwise, the State Board can approve or disapprove only the proposal put before it. (EC 35754)

3. Public Hearings on Petitions and Appeals

The State Board of Education holds its regular meetings monthly, except for August, usually on the second Wednesday, Thursday, and Friday. Following the analysis of unification proposals and territory transfer appeals by California Department of Education staff, and the preparation of recommendations to the State Board, public hearings are scheduled as the business of the State Board permits, usually on the first or second meeting day. At times the State Board holds the public hearings in a committee setting, but more typically it holds them before the full membership. When a committee setting is used, further public comment is rarely taken when the committee's recommendations are reported to the full State Board. As noted above, unification proposals require two public hearings (usually held back to back): one concerning the proposal's environmental impact and the other concerning its substance and consistency with the minimum criteria for approval.

County committees on school district organization have authority to approve or disapprove transfers of territory between school districts without action by the State Board. (EC 35706, 35709, and 35710) However, appeals from these decisions may be filed with the State Board. The appeals must be limited to specific issues of noncompliance with Education Code Section 35705, 35706, 35709, or 35710.

On appeals and contested unification proposals, it is typical for the State Board's presiding officer to set a time limit of 30 minutes each for proponents and opponents to present witnesses and other testimony, followed by a five-minute rebuttal period for each side. However, when the matters in disagreement are very limited and

focused in nature (or when only one side plans to present testimony), the presiding officer will typically reduce the time allowance.

Individuals wishing to address the State Board at a public hearing must notify the State Board Office in writing by noon of the third working day before the scheduled hearing. (5 CCR 18461) The notice should indicate the subject to be addressed, the organization (if any) being represented, and the nature of the testimony. Persons addressing the State Board are always well advised to be succinct and clear and to refrain from repeating what previous witnesses have said and from presenting substantial written materials at the meeting itself. Arrangements can be made with the State Board Office to distribute substantial written materials to the State Board members, California Department of Education staff, and other interested parties in advance of the meeting; it is advisable to contact the State Board Office at least two weeks before the meeting to work out the details of such a distribution.

B. Role of the California Department of Education

1. Staff Studies

The California Department of Education assists the State Board of Education by preparing the studies and reports needed for school district organization proposals. (EC 35751 and 5 CCR 18570) Reorganization proposals and appeals are filed with the State Board of Education and are referred to specific staff in the California Department of Education's Office of School District Organization and Transportation, School Business Services Division, for completion of the necessary studies, reports, and recommendations. For assistance from that office, call (916) 322-6029 or write to:

Office of School District Organization and Transportation
California Department of Education
560 J Street, Suite 170
Sacramento, CA 95814

Staff reports and services provided by that office include:

- a. Contacting state and local agencies to determine possible adverse environmental effects or to obtain additional information relative to the district reorganization
- b. Completing preliminary studies for the State Board of Education that are required by CEQA
- c. Submitting required CEQA documents to the State Clearinghouse in the Governor's Office of Planning and Research
- d. Reviewing district reorganization proposals for compliance with statutes and regulations
- e. Preparing reports and recommendations to the State Board of Education on whether to approve reorganization proposals

- f. Reviewing the administrative record on appeals from county committees on school district organization decisions on transfers of territory
- g. Preparing reports and recommendations to the State Board of Education on actions to be taken to approve or deny appeals on territory transfers
- h. Providing assistance to county committees on school district organization, school district administrators, and members of the public on legal requirements for school district reorganization
- i. Coordinating with other offices of the California Department of Education for their specialized studies and review of proposals (In particular, the Equal Employment Opportunity Office provides review of the possible impact of reorganization on racial and ethnic status; the Curriculum and Instructional Leadership Branch reviews the possible impact on educational programs; the Education Finance Division helps determine the effects on district revenue limits; and the School Facilities Planning Division assists in determining possible increased costs for school housing.)

2. Legal Counsel

The California Department of Education also provides legal counsel for the State Board of Education. Legal counsel is essential at each stage of preparation of recommendations to the State Board of Education, and counsel reviews all proposals to be presented to the State Board. The Department's legal counsel also represents the State Board of Education in litigation challenging State Board decisions. The Department's legal counsel is regularly consulted by the county's counsel and district's counsel on district reorganization legal issues.

For assistance with legal questions, call (916) 657-2453 or write to:

Legal Office
California Department of Education
P.O. Box 944272
Sacramento, CA 94244-2723

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